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**OFFICE OF PETITIONS**

In re Application of :  
Jun Endo et al. :  
Application No. 10/728,464 :  
Filing Date: December 5, 2003 :  
Attorney Docket No. 36856.1172 :  
Title: POINTING DEVICE AND METHOD :  
OF PRODUCING THE SAME :

DECISION ON RENEWED PETITION

This is a decision on the renewed petition filed August 31, 2004, requesting that the above-identified application be accorded a filing date of December 5, 2003, with Figure 3 as part of the original disclosure of the application.

The application was deposited December 5, 2003. However, on July 1, 2004, the Office of Initial Patent Examination (OIPE) mailed a notice stating that the application had been accorded a filing date of December 5, 2003, and that the application appeared to have been deposited without Figure 3.

The original petition, submitted on July 9, 2004, was dismissed via the mailing of a decision on August 23, 2004, for failure to establish that the missing figure was included on filing. The decision set forth:

Obviously, the degree on which applicants may rely on a postcard receipt to establish receipt of a particular item depends on the specificity of the itemization. Since the postcard indicates that 7 pages of drawings were included on filing, and 7 pages of drawings were indeed located in the electronic file, it appears that each of the seven pages which were submitted made their way into the electronic file. Unfortunately, figure 3 does not appear to be among these pages.

The PTO file is the official record of all papers filed in this application. A review of the official file reveals that Figure 3 was not received on filing. Instead, a duplicate copy of Figure 4 appears to have been filed in its stead. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Petitioner's assertion that figure 3 was included on filing is not more persuasive than either the electronic file or the postcard receipt which he prepared and submitted.

As such, it appears that Figure 3 was not filed with the Office on December 5, 2003. For this reason, the petition cannot be granted.

With this renewed petition, Petitioner has requested that "the original paper copy of the application as filed on December 5, 2003 be reviewed by the USPTO to confirm that Figure 3 was deposited in the USPTO with the application papers filed on December 5, 2003<sup>1</sup>." Petitioner has asserted that Figure 3 was submitted on filing, and the presence of two copies of Figure 4 is due to an error made by Office personnel during the scanning and image capture process.

Petitioner will note that it is the *electronic copy* of the PTO file which is the PTO file that is the official record of all papers filed in this application. As stated previously, a review of the official file reveals that Figure 3 was not received on filing. As such, the paper copy will not be inspected, and the renewed petition cannot be granted.

As such, the renewed petition is **DISMISSED**.

The application file is being returned to OIPE for further processing with a filing date of December 5, 2003, using only the application papers which were filed on that date. Figure 3 will not be entered.

If petitioner desires for the examiner to consider this page which was not submitted as part of the original disclosure, then petitioner may submit this figure via an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter<sup>2</sup>. The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



**Paul Shanoski**  
Senior Attorney  
Office of Petitions  
United States Patent and Trademark Office

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<sup>1</sup> Renewed Petition, page 2.

<sup>2</sup> See MPEP 608.02(h) and 608.04.